

OGC Has Reviewed

11 October 1954

Memorandum for the Record

**SUBJECT: Steps taken in connection with the repeal of
Section 9 of the CIA Act of 1949.**

1. When the CIA Act of 1949 was passed, the top salary grade for Government employees was \$10,330, and the Agency was having considerable difficulty in recruiting competent scientific personnel for its scientific intelligence activities, particularly in the light of the competition in the field at that time. Therefore, the Agency secured the passage of Section 9 of that Act, which authorized the Director to fix the compensation for not more than 3 positions to "effectuate those scientific intelligence functions relating to national security" which required the services of specially qualified scientific personnel. The Director was authorized to establish salaries for those 3 positions at a rate of not less than \$10,000 nor more than \$15,000 per annum.

2. Subsequent to the passage of the CIA Act of 1949, there was a general revision of Government pay scales, which included the establishment of the so-called super grade positions. Under these pay scales, GS-16 positions were paid at a rate from \$11,200 to \$12,000 per annum, GS-17 at a rate of \$12,200 to \$13,000 per annum, and GS-18 at \$14,000 per annum. A subsequent amendment to the law added \$800 to these pay scales, making the top salary of the classified service \$14,800 per annum.

3. Although CIA was exempted from the provisions of the Classification Act, the Agency has always adopted its pay scales, and therefore the Agency established the super grade positions at the same pay rate as established by the Classification Act. The Comptroller General rendered an opinion, however, which stated that while the Agency could adopt the super grades, it would be restricted to 3 super grade positions in the field of scientific intelligence because of the limiting language of Section 9 of the CIA Act of 1949. As there were several division chiefs in OSI who would have normally been entitled to a GS-16 grade, and other OSI personnel who might have been entitled to GS-17 salaries, it was necessary to take legislative steps to get around the Comptroller General's ruling. Therefore, in 1950 CIA requested the Congress to raise the minimum salary of our 3 statutory positions to \$13,100 (maintaining the top limit of \$15,000), and thus the Agency was able to allocate positions at grades 16 and 17 to OSI without the numerical limitation. This proposal became Public Law 697 of the 81st Congress on 16 August 1950.

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4. Subsequently, as noted above, an additional \$800 salary raise was granted Government employees, which meant that the Agency could make full use of GS-16 in the scientific field, but could not give any of the normal in-grade promotions to GS-17s because of the \$13,100 limitation in our Act. At the same time, the \$800 pay raise raised the ceiling for GS-18s to \$14,800 per annum, which was generally considered sufficiently close to \$15,000 per annum as to make it no longer necessary to have the special maximum authority granted by Section 9. In addition, it was pointed out that each succeeding Government-wide pay raise would mean that we would again have to raise the minimum amount payable under Section 9, in order to take care of the salaries of the super grades in OSI. For this reason, it was felt that at an opportune moment the best thing to do would be to repeal Section 9 in its entirety.

5. On 28 November 1951, this office prepared and forwarded to DD/A a proposed CIA legislative program for 1952 and included in there the recommendation that Section 9 be repealed. This recommendation included a recommendation that, if Section 9 were repealed, the repealer should include a safeguard for those holding a position compensated in excess of GS-18. At that time, this would have affected the AD/OSI only. The latter concurred in this recommendation and added the following statement: "It is assumed that the phraseology of the repeal will be so chosen that it will not jeopardize consideration within the Agency of future OSI recommendations of allotment of 'super grades' when justified." In informal discussions with the Bureau of the Budget on these proposals in January 1952, the Assistant Director of the Bureau of the Budget for Legislative Reference approved the recommendation for repeal of Section 9. It should also be noted that this proposal had the concurrence of the then Assistant Director for Personnel, Gen. F. Trubee Davidson.

6. In May 1952, following discussions which this office had with the Assistant Director of the Bureau of the Budget, the General Counsel of the General Accounting Office and members of the staff of the House Armed Services Committee, it was determined not to seek legislation in the closing months of the 82nd Congress. In the supporting memorandum on this decision, it was noted that as only 2 of the 3 Section 9 statutory slots had been filled, the Agency program would not appear to be harmed if our proposals were delayed until the opening of the 83rd Congress. Mr. Wolf, as DD/A, approved this recommendation on 23 May 1952.

7. Late in 1952, legislative proposals were prepared for introduction into the 81st Congress. These proposals were staffed out, and formal letters of transmission to the Vice President and the Speaker of the House were prepared. On the day before Inauguration Day discussions were held with Gen. Smith and Mr. Dulles as to whether the program should be forwarded to the Hill prior to the entry of the new Administration or be held until after the new Administration took office. It was agreed to follow the latter course. The legislation considered contained an outright repeal of Section 9, together with a mimeographed sectional analysis of the complete legislation, which is attached herewith. It was again determined in 1953 that CIA should not seek any legislation, and so again the program was held in abeyance.

8. In 1954, the Assistant Director for Personnel renewed their long standing request on an urgent basis that the Agency seek exemption from the Performance Rating Act of 1950. At the same time a great many bills raising the pay of the classified Civil Service had been introduced into the Congress, and it became obvious that, should any of these pass, the Agency would again be faced with the problem of Section 9 and the necessity of raising the floor thereof. DD/A and AD/Personnel, therefore, orally agreed that it should be repealed in its entirety.

9. On 23 February 1954, the Director lunched with Senator Carlson and Congressman Rees, Chairmen of the Senate and House Committees on Post Office & Civil Service respectively. During the course of that luncheon, certain legislative proposals in their field were discussed, including the necessity for securing the exemption from the Performance Rating Act and the repeal of Section 9. Both Chairmen agreed that they would accept these requests, and Chairman Rees requested me to arrange with his Committee Counsel for their inclusion in appropriate legislation. In furtherance of this request, the undersigned formalized the proposal to repeal Section 9 in a letter to Chairman Rees dated 19 May 1954. Repeal of Section 9 was included in the House version of S. 2665. On 27 July 1954, the Director wrote Chairman Carlson requesting him to include this provision in the final Senate action on S. 2665.

10. When the repeal of Section 9 was originally considered in 1952, the question arose as to whether there could be an outright repealer, or whether it would be necessary to include a safeguarding

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proviso to cover the present incumbents of the statutory positions. This office felt that it would be cleaner legislation if we could have an outright repeal. My recollection is that Mr. Houston talked with the General Counsel of the General Accounting Office, who indicated that he would have no objection to an outright repealer, and that no objection would be raised to continuing the incumbents at their statutory salary as long as those positions were held by the present incumbents, and in particular under this ruling that Dr. Chadwell could continue his current salary at \$15,000 per annum. The outright repealer, on this basis, was included in the draft legislation which General Smith approved in January 1953. At the time of our inclusion of the repealer in the current legislation, I raised this question again with Mr. Houston, and he again reiterated that we could go for an outright repealer in view of his discussions with the Comptroller General's office.

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